

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

DRAFT STAFF REPORT FOR REGULAR MEETING OF SEPTEMBER 9, 2005

Prepared August 1, 2005

ITEM: 17

SUBJECT: ORDER NO. R3-2005-005; GENERAL CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR REUSE OF NON-HAZARDOUS CRUDE OIL IMPACTED SOIL AND NON-HAZARDOUS SANDBLASTING AGGREGATE ON ACTIVE OIL LEASES AND FEE PROPERTIES IN THE CENTRAL COAST REGION.

KEY INFORMATION:

Location: Central Coast Region.
Type of Waste: Non-Hazardous Crude Oil Impacted Soil and Non-Hazardous Sandblasting Aggregate on Active Oil Leases and Fee Properties.

SUMMARY

Common practice in oil fields has historically included using crude-oil impacted soils for roads, berms and parking areas. The amount of impacted soil available for this type of reuse is significant and expanding. This general waiver regulates the reuse of crude-oil impacted soils to protect waters of the State.

Oil production results in large volumes of crude-oil impacted soils that are useful for maintaining roads in many rural settings. When applied with proper Management Practices, these materials do not pose a significant threat to water quality.

NOTE: For clarity purposes and to help minimize review time associated with Items Nos 16 and 17, Water Board staff recommends REVIEW OF ITEM 16 FIRST.

DISCUSSION

Background: The Central Coast Water Board (Water Board) adopted a policy regarding beneficial use of oil field waste materials in the Santa Maria Valley on December 14, 1973 (Resolution No. 73-05, Basin Plan Appendix A-16). Subsequently, on November 17, 1989, the Water Board expanded that policy to apply throughout the region (Resolution No. 89-04, Basin Plan Appendix A-17). Resolution No. 73-05 limited oil field waste material reuse to:

- (a) Clean, fresh-water drilling mud removed from the drilling of an oil well prior to the time that the first production string of casing is installed, and
- (b) Clean oil, not mixed with contaminants such as salt brines or toxic materials.

On April 15, 1983, the Water Board adopted a policy waiving waste discharge requirements for reuse of oil field wastes in compliance with Resolution No. 73-05.

Reuse of soil containing petroleum hydrocarbons has occurred in and around oil fields for decades. Most oil field roads are surfaced with oil coatings mixed at the field using whatever sources of oil are available when needed: crude oil from accidental spills, tank bottom sludges, and produced sand. Apart from the waiver, the Water Board has **never** regulated this type of reuse. However, in the 1980s and 90s, as historical oil field properties were increasingly being decommissioned and converted to other uses, more and more oil-impacted soil became available for reuse. Oil companies sought authorization to surface roads in rural and agricultural areas using oil-impacted soil generated by oil field cleanup projects.

Because of the increasing workload caused by oil field decommissioning and cleanup, this Water Board entered into a Memorandum of Understanding (MOU) with Santa Barbara County Fire Department in December 1998. The MOU clarified which cases the staff of each agency would work on and also included provisions for County permitting of reuse of oil-degraded soil.

On October 22, 2002, the Executive Officer issued a letter prohibiting reuse of oil-impacted soil. Reasons for the prohibition included inadequacies with Santa Barbara County's reuse program, a series of inappropriate and problematic reuse projects, field evidence of reused soils eroding into and polluting surface water drainages, and a lack of Water Board staff to provide an adequate field presence. On January 1, 2003, the waiver allowing reuse of oil field wastes expired pursuant to Senate Bill 390. Proposed Order No. R3-2005-005 establishes conditions under which certain oil-field waste materials may be reused.

Purpose and Location: Proposed Order No. R3-2005-005 (General Order) (See attached draft General Reuse Waiver Order, draft Reuse Waiver Conditions, and draft Monitoring Program) would regulate the reuse of crude oil impacted soils on active oil field leases and fee properties, consistent with the California Water Code and other goals, policies and objectives of the State of California. The proposed General Order applies to all active oil field leases and fee properties within the jurisdiction of the Central Coast Regional Water Quality Control Board. Presently, there are eight active oil field areas of the Central Coast region including, Santa Barbara, offshore Gaviota Coast, Santa Maria Valley (including Cat Canyon and Guadalupe), Casmalia Hills-Orcutt, Lompoc, Cuyama, Price Canyon near Arroyo Grande and the Salinas Valley (including San Ardo, King City & Monroe Swell). These areas include all or part of the following counties: Santa Barbara, Ventura, San Luis Obispo, and Monterey.

Proposed Order No. R3-2005-005 establishes conditions under which certain oil-field materials may be reused and regulates the reuse of crude-oil impacted soils to protect waters of the State. The General Waiver would be in effect for five years beginning September 9, 2005.

Enrollment Process: Dischargers that wish to enroll in the General Order are required to provide, for Executive Officer approval, a report of waste discharge or other documentation that provides sufficient information to demonstrate that compliance with the proposed General Order conditions can and will be achieved. The application fee will be a one-time-only enrollment fee that will be based on the discharge's Threat to Water Quality and Complexity Rating, as defined in the fee schedule in California Code of Regulations Title 23, Division 3, Chapter 9, Article 1, Section 2200.

The ROWD must include a proposed reuse management plan (Reuse Plan) to document each proposed reuse project area, a proposed management practices plan (MP Plan) to ensure that reuse activities do not add pollutants to water of the state, and a Compliance Plan describing the proposed strategy/plan of action to achieve compliance with the conditions of the General Waiver and General monitoring and reporting program.

Upon receipt of a complete application (ROWD), the Executive Officer will notify the applicant of Waiver enrollment if the facility meets the conditions of this Order, or will deny enrollment.

Applicants are not permitted to discharge pursuant to the proposed General Order until the Executive Officer notifies the applicants that they have been enrolled.

The Executive Officer may revoke or terminate the applicability of the general conditional waiver requirements to any reuse project activities at any time when the reuse project activities could affect the quality or beneficial uses of the waters of the State. The Water Board may terminate this Waiver in its entirety or for any type of discharge or any specific discharge at any time. The Executive Officer will update the Water Board concerning all new enrollments during regularly scheduled meetings.

Details of the proposed General Order conditions including prohibitions, specifications, and provisions, are contained *Attachment A, Waiver Conditions for the Reuse of Non-Hazardous Crude Oil Impacted Soil And Non-Hazardous Spent Sandblasting Aggregate on Active Oil Leases and Fee Properties in the Central Coast Region*. These discharges will not have a significant effect on the quality of waters of the state provided the corresponding criteria and conditions are met. The conditions of the proposed General Order ensures that crude oil-impacted soils will not pose a significant threat to Water Quality by requiring authorized beneficial Reuse projects to be properly managed, with well-established and maintained erosion and sedimentation Management Practices.

Parallel to this General Order is “*Order No. R3-2005-006, General Conditional Waiver of Waste Discharge Requirements for the Management of Petroleum-Impacted Soils at Authorized Waste Pile Management Facilities on Active Oil Field Leases and Fee Properties in the Central Coast Region*”, to be used for restricted management of petroleum-impacted soils. Authorized waste pile management facilities will serve as staging areas to triage impacted soils for disposal, treatment and/or beneficial use options. The reuse waiver will authorize restricted beneficial use of crude oil-impacted soils on existing roads, berms and parking areas on active oilfields and for encapsulated fill uses elsewhere. The proposed General Reuse and Waste Pile Orders is an attempt to balance the regulatory requirements and needed water quality protections with the economic benefit of oilfield beneficial reuse. The two proposed Orders would provide a streamlined method of implementing needed regulatory structure.

Monitoring/Management Practices: The primary water quality related concern associated with reuse projects is erosion and sedimentation, which may be caused by storm water runoff, poor project construction and maintenance. As such, any applicable exemption from permitting requirements for industrial facilities under the National Pollutant Discharge Elimination System (NPDES) regulations or the Clean Water Act does not exempt reuse projects from the storm water-related requirements of the proposed General Order.

The conditions of the proposed General Order ensure that crude oil-impacted soils will not pose a significant threat to Water Quality by requiring that reuse projects be properly constructed, and maintained, with well-established and maintained erosion/sedimentation control Management Practices. The proposed General Order establishes minimum standards for long-term maintenance, monitoring and reporting, and implementation of appropriate Management Practices. Management Practices that control erosion and sedimentation are more feasible and more effective than treatment methods and will be required. The proposed General Order requires reuse projects result in well-maintained, durable, and stable products.

The Water Board will use a variety of tools to evaluate the overall effectiveness of the General Waiver program. The Executive Officer will approve all proposed Reuse projects individually via approval of a complete report of waste discharge. Water Board staff will coordinate with local enforcement agencies to ensure compliance with approved management practices (MP) and monitoring requirements are achieved. Water quality-monitoring (as applicable), inspections/observations by local enforcement agencies will be used in conjunction with Management Practices implementation to

determine progress toward meeting conditions of the General Order. Water Board staff will routinely review progress and evaluate program effectiveness on an on-going basis.

The proposed General Order requires each discharger to comply with any more stringent relevant standards in the Basin Plan. In the event of a conflict between the provisions of the proposed General Order and the Basin Plan, the more water quality protective provision will prevail. Requirements of this Waiver include Management Practices to minimize water quality impacts. Management Practices that control erosion and sedimentation are more feasible and more effective than treatment methods and will be required. The waiver protects the environment in two ways: by encouraging recycling of oilfield waste rather than disposal in landfills or in place, and by ensuring that recycling occurs in a manner protective of water quality. The adoption of the waiver is also in the public interest because it includes conditions that will reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the state, and it contains more specific and more stringent conditions for protection of water quality compared to existing regulatory programs. The issuance of the proposed General Order is consistent with the goal to provide water resources protection, enhancement, and restoration, while balancing economic and environmental impacts, as stated in the Strategic Plan of the State Board and the Water Board.

Implementing Agencies: Primarily Water Board staff will carry out implementation of the General Order. Where a memorandum of understanding exists with local government to implement Water Board requirements, the local agency will also implement the proposed General Order. For example, Santa Barbara County has a process in place for permitting these types of projects. After permitting by the County, Water Board staff will review the application package (i.e., Report of Waste Discharge) and annual reports, and provide enforcement support as needed. County staff will perform field inspections/observations. Water Board staff is presently coordinating with Santa Barbara County to develop an MOU that establishes agency responsibilities pertaining to all authorized Reuse Projects.

ENVIRONMENTAL SUMMARY

The Water Board is initiating the lead agency for the project of issuing a general waiver of waste discharge requirements for oil field Reuse projects. The action to adopt this General Waiver will maintain or improve water quality. This General Waiver contains conditions (Attachment "A") will protect the environment by avoiding impacts to water quality and the environment. This General Waiver is for existing and future oil field Reuse projects. Existing Reuse projects are exempt from provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Title 14, California Code of Regulations, Chapter 3, Section 15301.

The Water Board followed appropriate procedures to satisfy the environmental documentation requirements of CEQA. In Resolution R3-2005-089, the Water Board staff conducted an Initial Study and proposed the adoption of a Negative Declaration for this project in accordance with CEQA and the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.). The draft Negative Declaration concludes that the waiver of waste discharge requirements for the specific types of Reuse projects addressed by this Order will not have a significant impact on the environment. Copies of the draft Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA. A copy of proposed Resolution R3-2005-089 including the Initial Study and Negative Declaration pertaining to the proposed General Order are attached for your consideration.

GENERAL ORDER ACCOMPLISHMENTS

- The proposed General Order protects waters of the State from pollution or contamination by conditioning authorized Reuse Projects such that they result in well-maintained, durable, and

stable products. Proper implementation of appropriate Management Practices will ensure waters of the State are protected.

- Encouraging recycling of oilfield waste rather than disposal in landfills by providing beneficial reuse options for impacted soil material within active oil field facilities.
- Minimizing Water Board staff and Discharger’s time preparing or revising individual waivers.
- Providing the Executive Officer defined enforcement authority to ensure compliance with the construction, maintenance and management of Reuse Projects.

COMMENTS

On May 4, 2005, the first draft of the proposed General Reuse Order No. R3-2005-005 and proposed Resolution No. R3-2005-089 including copies of the proposed Initial Study and Negative Declaration documents were sent to interested parties and agencies such as State Clearinghouse for review and request for public comments. Interested parties and agencies have been consulted throughout the development of the proposed General Order. Water Board staff met with, or contacted by phone or email, oilfield industry representatives, environmental groups (e.g., calls to ECOSLO, Sierra Club, and Environmental Defense Center prior to workshops), and local entities such as Division of Oil, Gas and Geothermal Resources from the Santa Maria Office, Santa Barbara County Energy Division, Santa Barbara County Petroleum Division, Santa Barbara County Fire Protection Division, and Santa Barbara County Health Department. In addition, Water Board staff hosted held three public workshops to hear public testimony prior to finalizing the draft proposed General Order and Initial Study and Negative Declaration documents. The following table lists all workshop participants.

PARTICIPANT	REPRESENTING	WORKSHOP #1 (June 3, 2005)	WORKSHOP #2 (June 22, 2005)	WORKSHOP #3 (July 20, 2005)
Sheila Soderberg	Water Board	X	X	X
Hector Hernandez	Water Board	X	X	X
Tom Dahlgren	Greka Energy	X	--	--
Harland Felt	Greka Energy	X	X	X
Dan Vosler	CCRRI	X	X	
James Sage	Sage Consulting and Shell	X	X	X
Glenn Oliver	Plains Exploration and Production	X	X	
Gonzalo F. Garcia	Unocal Corp.	X	--	--
David White	Self	X	--	--
Bob Poole	Western States Petroleum Association (WSPA)	X	X	--
Tom Gibbons	Gibbons & Associates	X	--	--
Greg Vogelpohl	ATC		X	--
Bruce Falkenhagen	Phoenix Energy, Corege Hydrocarbons, BC Conway Energy, GTI	X	X	X
Kristy Bosard	Santa Barbara County Fire Department	X	--	--
Deana Lewotsky	Santa Barbara County Petroleum Division	X	X	X
Greg Underwood	Peak Management Solutions, Inc	X	X	X
Julie Doane-Allmon	URS	X	--	--
Ron Chambers	Aera Energy	X	X	X
Ed Brannon	DOGGR, Santa Maria Division	X	--	--
Harvey Packard	Water Board	--	X	--
Steve Nailor	Santa Barbara County Fire	--		X

Following is a listing of all interested parties and agencies that were provided an opportunity to review and submit comments concerning the proposed General Order and associated CEQA documents.

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**ED BRANNON - DIVISION OF OIL, GAS, AND GEOTHERMAL RESOURCES (DOGGR)
(MARCH 10, 2005):**

1. This is a huge amount of monitoring work and a huge amount of RWQCB time to review the data. The magnitude is such that the RWQCB will not be able to perform its function timely and as such will find it impossible to engage in meaningful enforcement. The program is so big as to render it impossible to comply and most likely impossible to administer. You are going to get into the same fix you are now in. Not enough time to enforce so nothing gets done. My feeling is that this program needs to be simplified.

Staff Response: The proposed General Order incurred significant revisions. The results of these extreme revisions produced a much more simplified program that renders it easier to achieve and monitor compliance.

1. The program might be feasible for a large remediation facility such as Chevron-Texaco's in Cat Canyon or the one AERA may be proposing. It would also be good for the huge piles in Greka leases. But a different program is necessary for small piles.

Staff Response: The proposed General Order is designed to allow the Water Board flexibility in determining the program's applicability to facilities with small piles. If a facility has small waste piles that are confirmed as "crude- impacted" only soils, the Discharger is not required to apply for this program. Such facilities may apply for the General Reuse Order and use its crude oil-impacted soils for reuse projects within its facility.

2. How quickly do you intend to enforce your standards? Past practices have been forever. You need specific and easily understood standards so that you can easily enforce your program. A bunch of "if then, then that or maybe this or that" type of standards will doom your program to failure. We need a simple, easily understood program that can be easily enforced. Without it, you do not have the staffing to even begin to address the industry needs.

Staff Response: Staff agrees that if not managed properly, existing staff will not be sufficient to address the industry needs. The proposed General Order has been simplified to ensure it is very clear to all what the program's objectives and expectations are. The proposed Order's standards and conditions have also been clarified to help facility operators achieve compliance. Overall, the proposed program includes reasonable expectations and common-sense approach to managing impacted soil at active oil field facilities. Staff's objective is that once applicants are enrolled, minimal effort from the Water Board will be required.

3. What penalties will you impose? I believe your penalty schedule should be published. That way no one can say someone is being treated differently than others. If you are going to have a program, you must make it simple, easy to understand, easy to comply with, easy to enforce and easy to punish. Clean, quick and certain. When it takes years to enforce violations you lose the ability to control the program.

Staff Response: Staff is aware of this potential problem. Staff will utilize the enforcement authority of the Water Code to ensure compliance with the proposed Orders. However, staff has worked very hard with the oil industry to develop a program that is accepted by most. Based on ongoing discussions with industry contacts, the proposed General Orders offer a common sense approach to managing impacted soils within the active oil field facilities. The program is relatively inexpensive to implement, and includes a reasonable regulatory structure and associated conditions. Staff is optimistic that our strong enforcement tools will not be necessary for most. Nonetheless, staff realizes there will be some that will choose not to enroll in our program and will mismanage their impacted waste piles. Staff aims to utilize our strongest enforcement tools when warranted and appropriate.

4. Why do you need a registered professional to stamp a plan? Either it meets your standards or it does not. Your agency will be the final judge. Even if a PE or RG stamps a document and you do not approve it then what was the purpose of the RG? I think this is a nonsensical requirement left over from previous biases. A company is going to be judged according to compliance not according to who planned the project or who monitors it. If the project causes a threat to water quality it fails and enforcement action will be taken. An RG does not affect your ability to enforce your rules or prevent pollution. Each project is submitted to you for your approval regardless of who signs it. Why do you care who designed it. If it works and you approve it that it that. If the project fails your agency will take enforcement action. PERIOD!!!!

Staff Response: Staff discussed this issue extensively internally and during the workshop discussions. Based on the program goals and objectives, and the minimal potential threat that these proposed projects pose to the environment, staff agrees with your comment and has revised the proposed General Orders such that registered professionals are not required.

5. I think new sites and old sites should be treated the same way. There is no need to differentiate. Simplification!!! New project, meets old standards all is well. They submit a plan, pay the fees and you review and approve or disapprove it period. Get rid of the bureaucratic process. Simplify.

Staff Response: Staff agrees completely. As discussed throughout the comment section, the proposed Orders have been simplified and the beauracracy has been removed to the extent possible. The programs are designed to be simple, inexpensive and include reasonable conditions.

BOB POOLE - WESTERN STATES PETROLEUM ASSOCIATION (MARCH 23, 2005):

1. After more than 2 1/2 years without a Beneficial Reuse program in place and continuous good faith efforts to achieve reinstatement, what appears to have resulted is a program that the Integrated Waste Board specifically exempted from Title 27 which is now effectively being turned into a Title 27 activity. Frankly, industry is unable to grasp if something qualifies for a waiver, how and why does it need more than 80 conditions?

Staff Response: Staff concurs and has removed all Title 27 references from the proposed General Reuse Order. However, waste piles involve storage and not reuse, and are subject to Title 27, as are “discharges of residual wastes” from reuse. Further, the proposed General Reuse Order has been simplified to encourage recycling of crude oil-impacted soils for reuse projects. The primary focus of the monitoring program will be the implementation of Management Practices (i.e., inspections/observations) that will ensure authorized reuse projects are stable, and well constructed and maintained.

2. From an historical perspective: During a meeting at the Water Board in May, 2003 (Roger Briggs, Harvey Packard, Jennifer Soloway, Aaron Allen, Steve Kirby, Ron Chambers [via teleconference] and myself were in attendance), it was agreed: 1). Beneficial reuse of soils containing petroleum hydrocarbons is a practice to be encouraged; and, 2). To utilize the March 1999 Cal/EPA Final Report on Oilfield Road Mix as the basis for developing a workable Beneficial Reuse program for existing oilfields on the Central Coast.

I have herewith attached this report for your reference. Its conclusion is summarized below:

"---The RMWG [Road Mix Work Group] recognizes that road mixing is a practice that has been ongoing in the Central Valley for decades. The RMWG finds no evidence of nonhazardous road mix contributing to or being implicated in environmental problems. The RMWG further

recognizes that the beneficial use of road mix contributes to reduction of road dust and PM10 and enables all-weather access to remote sites for vehicles,...." Excerpted from: "Final Report: Cal/EPA Exploration and Production Regulatory Task Force: Beneficial Reuse of Non-Hazardous Oil Field Road Mix, March 1999."

Without a workable beneficial reuse program (more specifically, having road mix on roads in the Region) what can result are the unintended consequences of higher than necessary sedimentation of stream channels adjacent to unpaved oilfield roads, loss of access to remote well sites that can result in delayed detection of spills and leaks, less safe driving conditions for employees and agency personnel. Preventing these potential occurrences must surely be of primary concern.

Staff Response: Staff concurs completely with this comment. The proposed Order has been simplified to ensure the focus of the beneficial reuse program is to encourage the reuse of crude oil impacted soils to be used as road mix for roads within active oil field facilities. Water Board staff realize these reuse projects will not present a significant threat to water quality. While the implementation of Management Practices will be required to ensure sedimentation and erosion of authorized projects is minimized to the extent possible, these projects do not present any more threat to the environment than existing asphalt roads and parking lots.

3. There have been two sets of WDR waivers for road mixing adopted by this Board. None of them were anywhere near as complicated as the proposed "reuse" waiver and Attachment A. The drafts being submitted are no less complicated than those being recommended for adoption for hazardous waste pits and Class III landfills. This is especially difficult to understand given that staff indicates that road mixing, done properly poses little risk to water quality and oilfield "waste piles" (meaning road mix facilities) which have been around for years and exempted from regulation by the CCRWQC Board itself on two separate occasions. At this point, it is our assessment the program being proposed does not achieve a realistic and workable Beneficial Reuse opportunity.

Staff Response: Staff agrees completely. The proposed General Order has been simplified to ensure it is clear authorized reuse projects do not pose a significant threat to water quality. Beneficial reuse projects are encouraged and if implemented in accordance with the conditions of Attachment A, will not present a significant threat to water quality.

4. Once a reuse project (ex. road base, parking lot) is completed, is ongoing stormwater monitoring required indefinitely?

Staff Response: The proposed Order has been revised to require stormwater monitoring only if deemed necessary based on visual observations during storm events or if it is determined that significant sedimentation to a nearby surface water body has occurred.

BOB POOLE - WESTERN STATES PETROLEUM ASSOCIATION (JUNE 2, 2005)

1. Please clarify the applicability of NPDES stormwater requirements at industrial facilities (i.e., active oilfield facilities).

Staff Response: The language concerning the applicability of NPDES stormwater requirements has been revised as follows:

"Any applicable exemption from permitting requirements for industrial facilities under the National Pollutant Discharge Elimination System (NPDES) regulations or the Clean Water Act does not exempt Reuse Projects from the storm water requirements of this general conditional waiver."

2. No "free liquids" makes sense for reuse projects, but not at the processing areas.

Staff Response: Staff concurs. The proposed Order allows for limited and controlled use of free liquids within the processing areas.

3. Roads go where they go. The 5-foot prohibition does not make sense here like it does at the mixing area.

Staff Response: Staff agrees. The five-foot requirement (separation from groundwater) stems from the Title 27 land disposal regulations. As such, this requirement is only appropriate for waste pile management facilities, not roads.

4. Consider placing “inhabited” in front of structures, a covered parking awning could be considered a structure.

Staff Response: Staff concurs. The proposed Order has been revised to ensure it is clear that although structures may be constructed at reuse projects and or waste pile management facilities, “inhabited” structures are not allowed.

5. A vice-president of a company has to sign a road-building plan.

Staff Response: The proposed Order specifically allows technical reports required by the proposed Order to be signed by “an authorized representative”. A “duly authorized representative” means a person who has a written authorization from the Discharger to sign the required reports on behalf of the Discharger.

GREG UNDERWOOD - PEAK MANAGEMENT SOLUTIONS, INC. (JUNE 6, 2005):

1. Need to define “active facilities”. The County Petroleum Department mentioned that they perceive something as “active” when the pumps are operating but does not consider it “inactive” until the lease is fully abandoned (i.e., wells plugged, facilities demolished, sumps, roads and pipelines removed). Perhaps complete “lease closure”, as defined by the County of Santa Barbara Petroleum Department, should be the definition of when an active oil field facility becomes inactive. The wells are always the first thing to be shut in and as such should not be the determining factor for defining “active”. By defining “active sites” as any site that has not achieved complete lease closure, these waivers can be applied to sump restoration projects as well and additional waivers will not be required.

Staff Response: For clarification purposes, the proposed General Order defines the terms “Active Oil Field” and “Discharger”, as follows:

“Discharger” means the landowner or operator of the Reuse Projects.

“Active Oil Field” refers to any lease or fee property located within an active oil field. An active oil field is a lease or fee property that has not received formal closure approval from the Regional Board, DOGGR, and the local regulatory agency with jurisdictional authority.

2. Fee structures need to be discussed and applied appropriately taking into account project size and complexity.

Staff Response: The proposed General Order has been revised to only require a one-time-only enrollment fee that will be based on the discharge’s Threat to Water Quality and Complexity Rating, as defined in the fee schedule in California Code of Regulations Title 23, Division 3, Chapter 9, Article 1, Section 2200.

BRUCE FALKENHAGEN - CAREAGA HYDROCARBONS, INC. (JUNE 10, 2005):

1. I am a very small oil producer and I represent a few other small producers. Our concerns deal with the cost to comply and also to make the program to where it encourages everyone to do the right thing. Excess paperwork, testing, monitoring all directionally drive the small producer to non-compliance and to hide. If high fees are established, many small operators will ignore the program.

Staff Response: Staff is aware of this concern and has revised the proposed General Order to ensure the costs of enrolling in this program are kept at a minimum and simplifying the program. Practically all aspects of the proposed program have been simplified. Paperwork, testing, and monitoring are being kept to a minimum. Only those requirements that are believed to be reasonably required for the protection of water quality have remained.

2. Written permission from the landowner should not be required. For each of our leases, many years ago the landowner/mineral owner signed an agreement whereby he agreed to allow the oil company to produce the oil and gas and to use the land. These rights were given to the oil company in exchange for paying him an agreed royalty percentage on the oil and gas produced. Now years later, along comes the RWQCB saying that I need new landowner approval. This is unfair and is in violation of the contract we have. The landowner previously signed off on those rights to the company. Most likely the landowner has changed in the interim and the landowner might not be as agreeable as the original one was. The Regional Board cannot come in and grant the landowner rights that are not RWQCB's to give.

Staff Response: Water Board staff does not intend to require a discharger to break or complicate any previous agreement the oil producer has with the landowner. The Water Board's intent is to ensure the landowner is aware of the reuse and water pile projects being implemented. To minimize complications with existing agreements between the landowners and oil producers, the proposed General Order has been modified to require the oil producer to only "notify" the landowners of any reuse or waste pile projects being implemented rather than to request their permission. This is appropriate since property owners are also responsible for waste discharges at or from their property.

3. The condition to hire a qualified professional to oversee "small" reuse projects, cleanups, or to prepare plans is a deal killer for a small company and should be deleted. We are talking about a small volume of material, most likely from a stuffing box or minor leak. In the past, these materials are laid out right then for a berm around the wellhead or to fill potholes near the well, or to strengthen the dike. Further, in the situation where tank bottoms are blended and used for roads, again, where is the need for a professional? In the majority of these situations no plans are needed; one simply takes the material with the backhoe, mixes in some loads of native material, blend it on the road and lay it down. Periodically, we blade it. Very simple, understandable, quick, inexpensive, and with no issue of a threat to water quality, health and safety, or erosion over many decades. Why develop a new "professional engineer" welfare program now? These roads are not used by the general public.

Staff Response: Staff agrees with this comment. Beneficial reuse projects are not intended to be used by the general public. These projects (e.g., roads) are to be authorized only within active oilfield properties. Thus, there should be no need for such projects to be overseen or approved by a qualified professional engineer (P.E.) or registered engineering geologist (R.E.G.). Nonetheless, Water Board staff believes there should be minimum construction standards for all authorized projects. Thus, the proposed General Order has been revised to require all authorized construction projects be performed by experienced personnel and in accordance with "Good and Workmanlike" construction standards, as determined by oversight agency inspections. Specifications and plans shall be signed by a principal executive officer of at least the level of vice-president or their duly authorized representative.

4. Testing should be split into two different testing routines. One testing routine would be for stuffing box, oil spill, and tank bottom material where one is dealing with natural production, then the second type of testing would be for sump material, which has the potential to have other wastes, manmade chemicals, PCB's, old tires, etc. Each is a different animal, and the one size testing fits all approach is inappropriate.

Staff Response: Staff fully agrees with this comment. The proposed General Orders have been revised to ensure that all characterization of impacted soils is proposed by the Discharger as part of the enrollment application (Report of Waste Discharge). The Discharger will be required to propose for Executive Officer approval, a specific description of the proposed sampling and analyses protocol to be utilized to characterize the petroleum-impacted soil waste piles. This section must also include a description of the proposed criteria and sampling protocol to determine which soils meet beneficial reuse standards, require offsite disposal and require further processing and treatment. Further, if the Discharger is able to demonstrate that existing analytical data exists to adequately characterize a particular source of impacted soils, further characterization may not be required.

5. Please clarify whether at decommissioning the Discharger will be required to remove all reuse materials or may leave them in-place.

Staff Response: The proposed General Order does not address what will or will not be authorized during decommissioning of an oil field facility. Such decision will be made by the appropriate local authorities with jurisdictional authority.

6. The proposed Order requires notice be provided at least 90 days prior to the effective date of a change in ownership. This is unrealistic. When an oil property sells, it may close in 1-2 weeks or 1 month, not 3 months. Additionally, several other noticing deadlines pertaining to changes in operations or noticing every time a minor spill occurs are unreasonable.

The Order also states that the waiver is not transferable except after notice and subject to the approval of the Executive Officer. Why does the E.O. have any right to approve or disapprove a transfer of ownership?

Staff Response: Staff agrees completely and has revised the noticing deadlines to address the concern. Further Water Board staff acknowledges the E.O. does not have the legal right to approve or disapprove of a transfer of ownership. The proposed Order was revised to state, "This General Waiver is not transferable. The Discharger shall notify the Water Board in writing of any proposed change in ownership or responsibility of the property where an authorized reuse project area is located. Notification shall be performed by filing a Notice Of Termination within 30-days following the effective date of change in ownership or responsibility. Failure to submit an NOT shall be considered a violation of §13264 of the Water Code."

7. Companies should be allowed to group facilities by County. The same agency will do all inspections, so it makes sense to allow a company to submit one application per county.

Staff Response: Significant discussion pertaining to this issue occurred during one of the Workshops. Based on these discussions, staff agreed to allow companies to group facilities as follows: "The Discharger shall provide a minimum of one application package (ROWD) per lease or fee property. Multiple Reuse projects located within a single lease or within the Discharger's existing Business Plan, as defined by the respective County or Certified Unified Public Agency in which the facility is located, may be addressed in a single ROWD."

8. The proposed General Orders require submittal of rainfall information. I suggest that if rainfall data is needed, then the Water Board or County can request it directly from NOAA. Rainfall data is readily available if and when needed.

Staff Response: Staff concurs and has modified this requirement as suggested.

9. The reporting period should be changed to coincide with the government's rainfall period, which is July 1st to June 30th. Also, please allow 60 days for the reporting, as opposed to 30.

Staff Response: Staff discussed this issue extensively during the 3rd workshop meeting and all in attendance agreed the annual report should be submitted by October 1 of each year. The specific requirement is as follows:

"By **October 1 of each year**, the Discharger shall submit an Annual Report summarizing all preparedness measures performed to ensure discharges to surface or groundwater do not occur during the impending rainy season, and ensure all relevant Management Practices (**Provision 7.m**) have been successfully implemented. The report shall be submitted in accordance with MRP No. R3-2005-005".

BOB POOLE - WESTERN STATES PETROLEUM ASSOCIATION (JUNE 15, 2005):

1. As discussed at the June 3, 2005 public hearing, we would also respectfully recommend that the Staff consider a "Small Producer" waiver from the General Order similar to the "Wineries, Order No. R3-2002-0084" which would still inform the Board and other interested agencies that smaller facilities are being operated, but relieve the operators from the annual monitoring and reporting requirements while still subjecting them to the prohibitions, recommendations and specifications contained in the general Order. If the application for coverage or waiver goes to the other interested agencies (DOGGR, local jurisdictional agencies) then they can verify compliance with either the general Order or waiver during inspections by their personnel. As part of either DOGGR or local lease restoration, closure of the processing facility to the satisfaction of the Board could be a milestone under either or both of the other agency's enforceable lease restoration programs.

Staff Response: Staff believes the Executive Officer has discretion to determine if a "Small Producer" should be enrolled in the General Waste Pile Waiver based on whether or not the operation could pose a risk to water quality. Such decision would be made as part of the application process. For instance, if a Discharger believes it must be exempted from enrolling into the General Order, it must justify such exemption in its application package. The decision as to whether "Small Producers" must enroll will be based on site-specific considerations including waste pile volumes, sources, and whether the location could pose a threat to water quality. As suggested above, the local agencies will help verify site considerations and present management practices.

2. We have used the "General Conditional Waiver of Waste Discharge Requirements - Timber Harvest Activities in the Central Coast Region - Resolution No. R3-2005-0066" for comparison when reviewing the proposed oilfield reuse waiver and determined that, once again, the waiver and monitoring programs are more streamlined while still meeting the Board's mandate to protect surface and groundwater. Of particular note, the Timber Order is silent on the removal or continued use of installed roads at the end of harvesting activities. Also, the Monitoring and Reporting program contains numerous references to a road inventory template and forensic (visual) monitoring features that are substantially easier for the applicant than those currently identified in the proposed oilfield Reuse Waiver.

We also believe that the applicable statutes and regulations offer sufficient flexibility for the Regional Board to structure appropriate vehicles to deal with this situation in an efficient, cost-

effective manner - one that ensures protection of water quality. For example, waivers under Water Code § 13269, with reasonable monitoring and reporting requirements, would in our view clearly be in the public interest. In addition, Title 27 CCR § 20080(b) provides for “engineered alternatives” to the general construction and prescriptive standards. Finally, Title 27 CCR § 20090(h) (reuse and recycling) represents an apparent regulatory preference for use of an exemption for such activities as reuse of soil containing oil on a variety of roads.

Staff Response: Water Board staff has considered this comment seriously and has used the above referenced Timber Harvest Waiver as a guide to revise the proposed Reuse and Waste Pile Waivers. However, timber harvest activities are significantly different than reuse and oily waste storage so the ability to make useful comparisons between the two programs is very limited.

BRUCE FALKENHAGEN – ENERGY ENTERPRISES (AUGUST 7, 2005)

1. Prohibitions, #21. The words “permanently inhabited” were to be added before “structures”

Staff Response: Staff has revised the Proposed Order as suggested.

2. Provisions, D.7.1. The first word needs to be capitalized.

Staff Response: Comment noted.

3. Provisions, D.18. The words “to anyone” should be deleted. It was picked up in D.20 of the Waste Pile Order but missed here. Should the first sentence be “General Waiver” as opposed to simple “Waiver” to match the Waste Pile Order?

Staff Response: Staff has made the recommended corrections.

4. Provisions, D. 18. I suggest spelling out NOT (notice of termination).

Staff Response: Item has been changed as recommended.

5. Prohibitions 4 and 7 should be moved to the Beneficial Reuse prohibitions.

Staff Response: Staff agrees to only move Prohibition 7. Prohibition 4 would require a five-foot separation between a beneficial reuse project and groundwater. Such prohibition would be unreasonable for reuse projects. The following prohibition has been incorporated into the proposed General Reuse Order, as prohibition No. 8:

“Discharge of waste, other than crude oil-impacted soils and spent sandblasting aggregates, is prohibited, except in compliance with Water Code Section 13264”.

RECOMMENDATIONS

- Adopt proposed “Resolution No. R3-2005-089, Approving an Initial Study and Adopting a Negative Declaration for General Conditional Waiver of Waste Discharge Requirements for the Reuse of Non-Hazardous Spent Sandblasting Aggregate on Active Oil Leases and Fee properties in the Central Coast Region.”
- Adopt proposed “Order No. R3-2005-005; General Conditional Waiver of Waste Discharge Requirements for the Reuse of Non-Hazardous Crude Oil Impacted Soil and Non-Hazardous Spent Sandblasting Aggregate on Active Oil Leases and Fee Properties in the Central Coast Region.”

ATTACHMENTS

1. "Resolution No. R3-2005-089, Approving an Initial Study and Adopting a Negative Declaration for General Conditional Waiver of Waste Discharge Requirements for the Reuse of Non-Hazardous Spent Sandblasting Aggregate on Active Oil Leases and Fee properties in the Central Coast Region."
2. "Initial Study and Negative Declaration for General Conditional Waiver of Waste Discharge Requirements for the Reuse of Non-Hazardous Crude Oil Impacted Soil and Non-Blasting Aggregate on Active Oil Leases and Fee properties in the Central Coast Region."
3. "Order No. R3-2005-005; General Conditional Waiver of Waste Discharge Requirements for the Reuse of Non-Hazardous Crude Oil Impacted Soil and Non-Hazardous Spent Sandblasting Aggregate on Active Oil Leases and Fee Properties in the Central Coast Region."
4. "Attachment A, Order No. R3-2005-005; Conditions for the Reuse of Non-Hazardous Crude Oil Impacted Soil And Non-Hazardous Spent Sandblasting Aggregate on Active Oil Leases and Fee Properties in the Central Coast Region."
5. "General Monitoring and Reporting Program No. R3-2005-005 for the Ongoing Maintenance of Authorized Reuse Project Areas on Active Oil Leases and Fee Properties in the Central Coast Region."
6. Public Comments.